

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ERNEST SIMMONS, ROBIN SIMMONS,  
KORY SIMMONS, individually and as  
general partners of SIMMONS & SON  
HAULING, a Washington general  
Partnership, S.I. LLC, a  
Washington limited liability  
company, and N.V.L.R. & M. LLC, an  
Oregon limited liability company,  
qualified to do business in the  
State of Washington,

NO. CV-12-3046-EFS

ORDER DISMISSING  
COMPLAINT, ENTERING  
JUDGMENT, AND CLOSING  
FILE

Plaintiffs,

V.

WASHINGTON STATE DEPARTMENT OF  
NATURAL RESOURCES, DAVE NORMAN,  
JOHN BROMLEY, ELAINE POWELL, CHRIS  
JOHNSON, and DAVID WILLIAMSON,  
d/b/a HORSESHOE BEND QUARRY, INC..

## Defendants.

On June 19, 2012, the Court ordered the parties to brief whether this lawsuit should be dismissed or stayed. ECF No. [37](#). After reviewing the filed briefs and relevant authority, the Court is fully informed. For the following reasons, the Court concludes it must dismiss this lawsuit.

Plaintiffs contend this lawsuit's central issue, i.e., whether the Washington State Department of Natural Resources (DNR) or the named DNR employees (Dave Norman, John Bromley, Elaine Powell, and Chris Johnson)

1 (collectively, "State Defendants") knew that they lacked the authority  
2 to issue the Emergency Order to Suspend Surface Mining ("DNR Emergency  
3 Order") to the Simmons' mine following the Nile Landslide, does not  
4 present a question of state law, but rather only a federal constitutional  
5 question. The Court disagrees. Before the Court can determine the  
6 federal constitutional question posed by Plaintiffs of whether the State  
7 Defendants issued the DNR Emergency Order with the knowledge that they  
8 lacked the authority to do so, the Court is required to rule as a matter  
9 of law whether the State Defendants did or did not have the authority to  
10 issue the DNR Emergency Order under RCW 78.44.200. This legal question  
11 is a question of state law: no federal statute, regulation, or policy is  
12 involved. Because the Court must respect the State's sovereign immunity,  
13 applying the *Ex Parte Young* exception to Eleventh Amendment is not  
14 appropriate here. Therefore, the Court lacks jurisdiction over the State  
15 Defendants and dismisses Plaintiffs' claims against them.<sup>1</sup>

16 Count VII (conspiracy to restrain trade, 15 U.S.C. § 1), Count VIII  
17 (agreement to not use goods of a competitor, 15 U.S.C. § 14), Count IX  
18 (conspiracy to restrain trade, RCW 19.86.030), and Count X (agreement to  
19 not use goods of a competitor, RCW 19.86.030) were also brought against  
20 Defendant David Williamson, who is not a state employee. Because Mr.  
21 Williamson is not a state employee, the State's sovereign immunity does  
22 not extend to him. However, given the alleged basis and nature of these  
23 Counts, Plaintiffs may not pursue these Counts without the State

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25 <sup>1</sup> A stay of this lawsuit to remedy the *Younger* abstention issues  
26 addressed in the Court's June 19, 2012 Order is not appropriate under the  
circumstances.

1 Defendants: the State Defendants are indispensable parties to the  
2 question of whether they and Mr. Williamson conspired to restrain trade  
3 or unlawfully agreed to use Mr. Williamson's goods. See Fed. R. Civ. P.  
4 19(b) (listing factors for court to consider when joinder is not  
5 feasible). Accordingly, the Court concludes that equity requires the  
6 entire lawsuit be dismissed.

7 For the reasons given above and in the Court's June 19, 2012 Order,  
8 ECF No. 37, **IT IS HEREBY ORDERED:**

9 1. Plaintiffs' Complaint, **ECF No. 1**, is **DISMISSED** without  
10 prejudice.

11 2. Judgment shall be **ENTERED** in Defendants' favor **without**  
12 **prejudice**.

13 3. All pending dates and deadlines are **STRICKEN**.

14 4. This file shall be **CLOSED**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
16 this Order and provide copies to counsel.

17 **DATED** this 3<sup>rd</sup> day of July 2012.

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S/ Edward F. Shea  
20 EDWARD F. SHEA  
21 Senior United States District Judge

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